



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,835	09/06/2005	Roland Stangl	12684.0014USWO	1866
23552 7590 05/12/2009 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
BLIZZARD, CHRISTOPHER JAMES				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
05/12/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,835

Applicant(s)

STANGL, ROLAND

Examiner

CHRISTOPHER BLIZZARD

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 6/13/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to the amendment filed 3/15/09. As directed claims 2-12 were amended, no claims were added or cancelled. Therefore claims 1-12 are currently pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "the membrane nebuliser" in the eighteenth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 3 recites the limitation "the membrane nebuliser" in the third line of the claim. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 5 recites the limitation "the framework of the operating system of the PDA" in the fourth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 12 recites the limitation "the membrane aerosol generator" in the second line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stenzler (6,435,175) in view of Grey (7,111,756).

10. Regarding claims 1-5, Stenzler discloses an aerosol therapy device having a nebuliser unit (50, 70) and a control unit (4) in which the nebuliser unit comprises a controllable aerosol generator comprising an inhalation sensor (58) (column 3, lines 66-67; column 4, lines 1-5), a programmable chip (76) that sends data to the control unit (4) via a data line (60) and a means (98) to actuate the electrically operated membrane aerosol generator (100) (column 4, lines 63-65) from data received from the control unit (4). The control unit (4) comprises communication devices (60,158) for receiving and transmitting data to and from the nebuliser unit (column 6, lines 23-24) and a device for generating control data that comprises a microprocessor (150) (column 5, lines 47-50) and a card reader microprocessor (152) (column 5, lines 61-62). Stenzler does not disclose that the control unit is a PDA. Grey teaches a dose dispensing apparatus wherein a PDA is in communication with a hand held dispensing device (column 3, lines 30-34), wherein the dispensing device could include an infrared communications port (column 3, lines 34-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the aerosol therapy device of Stenzler with a PDA control unit as taught by Grey in order to provide the advantage of using a common programmable computing device to control the device.

11. Regarding claims 6, 7, and 8, Stenzler discloses microprocessors (150, 152) and storage units (154) that are programmed to process data from the inhalation sensor (58) and information storage element (78) and control the functions of the device by communicating with components of the device (column 5, lines 47-67).
12. Regarding claim 9, Stenzler discloses a displace unit (10) that is controlled by the control unit (150) (column 6, lines 35-37).
13. Regarding claim 10, Stenzler discloses a telecommunication module (32) for a remote data connection (column 3, lines 40-47).
14. Regarding claim 11, Stenzler discloses an information storage element (76), analogous to a memory card, which can be programmed with medicine and dose information (column 4, lines 20-39) and is read by a card reader (152) on the control unit (4).
15. Regarding claim 12, the combination of Stenzler and Grey discloses the claimed invention wherein a control means (57) of the dispenser, as taught by Grey, allows activation of the dispenser (1) when it is not in receiving any control data from the communication device of the PDA (column 5, lines 53-63).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Godfrey (7,151,456) a medicament dispenser with an antenna for sending and receiving data, Voges (6,637,430) an inhaler with a programmable controller and memory, and Hillsman (4,984,158) an inhaler attached to a computer with dosing information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771